

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FIRE & CASUALTY INSURANCE
COMPANY OF CONNECTICUT

v.

QUENTIN LIGON

O'NEILL, J.

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CIVIL ACTION
NO. 01-5300

JANUARY , 2003

MEMORANDUM

Plaintiff filed the instant complaint on October 18, 2001 seeking a declaratory judgment stating that it is not obligated to provide defendant, Quentin Ligon, with underinsured motorist insurance (“UIM”) benefits in an amount greater than \$35,000. On January 31, 2000, Ligon was injured in an automobile accident while operating a motor vehicle owned by Atlantic Paratransit Corporation of Pennsylvania¹. Ligon settled with the liability insurer for the other vehicle for its policy limit of \$100,000. Thereafter, defendant sought underinsured motorist benefits from plaintiff, Atlantic Paratransit’s insurance carrier. Plaintiff concedes that it owes defendant \$35,000 in underinsured motorist benefits, but denies any further liability. On November 29, 2001 the parties entered into a partial settlement agreement in which plaintiff paid defendant \$35,000. Before me now are plaintiff’s and defendant’s motions for summary judgment and the responses thereto.

¹Atlantic Paratransit Corporation of Pennsylvania is a subsidiary of Atlantic Express Transportation Group, Inc. Although defendant’s accident occurred while he was operating an Atlantic Paratransit vehicle, I refer to Atlantic Express throughout this opinion because it was the entity that negotiated and obtained the insurance coverage that applies to this case.

BACKGROUND

The parties dispute which agreement between plaintiff and Atlantic Express defines the coverage in place on the date of the accident. They also dispute how much underinsured motorist coverage is provided under the applicable agreement.

The first agreement that may provide the coverage available on the date of the accident is a document titled “Insurance Binder.” Def.’s Br. in Opp’n to Pl.’s Mot. for Summ. J., Ex. E. It evidences an agreement by plaintiff to provide automobile insurance to Atlantic Express for the period from 12/31/1999 to 02/29/2000. The Insurance Binder defines uninsured motorist coverage as “Statutory.” Id. It is signed with an illegible signature and dated 12/23/1999.

The second agreement that may provide the coverage available on the date of the accident is Policy No. AUT001884. Def.’s Br. in Opp’n to Pl.’s Mot. for Summ. J., Ex. I. In the Policy plaintiff agreed to provide Atlantic Paratransit automobile insurance for the policy period of 12/31/1999 to 2/28/2001. The Policy incorporates an endorsement that sets the Pennsylvania uninsured/underinsured motorist limit at \$35,000. It is signed by a Deborah Simpson, but not dated.

In addition to these two agreements there are other relevant documents. In a document titled “Pennsylvania Commercial Auto - Coverages/Limits Selection” Atlantic Express selected \$35,000 underinsured motorist coverage. Pl.’s Br. in Support of Mot. for Summ. J., Ex. C. This document is dated 12/31/1999. It is signed by Nathan Schlenker, Chief Financial Officer of Atlantic Express. Pl.’s Br. in Support of Mot. for Summ. J., Ex. D. Mr. Schlenker did not write the date on which he signed the document.

In a communication dated December 22, 1999, an entity with which Atlantic Express’

broker was negotiating provided a quote to Atlantic Express. Def.'s Br. in Opp'n to Pl.'s Mot. for Summ. J., Ex. C. The quote included "basic per state" "UM" coverage. The premium quoted is \$7,500,000.

In a fax dated December 23, 1999, Atlantic Express' broker sent Mr. Schlenker a proposal for automobile insurance. Def.'s Br. in Opp'n to Pl.'s Mot. for Summ. J., Ex. B. The proposal included "statutory uninsured motorists . . . protection - per state." The premium quoted is \$7,500,000.

An invoice dated December 29, 1999, provides for "Basic Limits - per state - Uninsured/Underinsured Motorist." Def.'s Br. in Opp'n to Pl.'s Mot. for Summ. J., Ex. F. It quotes a gross premium of \$7,500,000.

Plaintiffs have produced the testimony of two persons involved in the procurement of insurance for Atlantic Express. Both the insured itself, through its Chief Financial Officer Nathan Schlenker, and the insured's broker, through its President Robert G. Lull, state that Atlantic Express contracted for \$35,000 in underinsured motorist benefits. Both also express the opinion that Atlantic Express was entitled to that amount of coverage under both the binder and the policy.

STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact," the moving party is entitled to summary judgment. Fed. R. Civ. P. 56(c). An issue is genuine if the fact finder could reasonably

hold in the non-movant's favor with respect to that issue and a fact is material if it influences the outcome under the governing law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). It is my obligation to determine whether all the evidence can reasonably support a verdict for the non-moving party. See Allstate Ins. Co. v. Brown, 834 F. Supp. 854, 856 (E.D. Pa.1993). In making this determination the facts must be reviewed in the light most favorable to the non-moving party. See Anderson, 477 U.S. at 248. Further, the non-moving party is entitled to all reasonable inferences drawn from those facts. Id. However, the non-moving party must raise "more than a mere scintilla of evidence in its favor" in order to overcome a summary judgment motion and cannot survive by relying on unsupported assertions, conclusory allegations, or mere suspicions. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989). Although the moving party bears the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must establish the existence of each element of its case. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

DISCUSSION

The is no genuine issue of material fact and plaintiff is entitled to judgment as a matter of law. Viewing the facts in the light most favorable to defendant Ligon, he is entitled only to the \$35,000 of benefits that he has already received.

There is no doubt that the formal policy, which was executed after defendant's accident, limited underinsured motorist benefits to \$35,000. Def.'s Br. in Opp'n to Pl.'s Mot. for Summ. J., Ex. I. The policy states that it applied from December 31, 1999 until February 28, 2001.

Defendant asserts that the insurance binder instead of the policy governs what amount of

benefits were available on the date of the accident. He points to the definition of underinsured motorist benefits in the binder as “statutory” to support his contention that he is entitled to an amount equal to the combined single limit of \$1,000,000. Def.’s Br. in Opp’n to Pl.’s Mot. for Summ. J., Ex. E. After considering the evidence before me, I find that plaintiff is entitled to summary judgment regardless of whether the binder or the policy governs the terms of the coverage in place on the date of the accident.

Pennsylvania law mandates that underinsured motorist coverage is equal to the liability available for bodily injury unless the insured requests a lower amount of coverage in writing. 75 Pa. C.S. § 1734 (2002). Plaintiff has produced a document, the Pennsylvania Commercial Auto - Coverages/Limits Section, with the date of December 31, 1999, in which Atlantic Express requests underinsured motorist coverage of \$35,000. Pl.’s Br. in Support of Mot. for Summ. J., Ex. C. The Coverages/Limits Section is signed and Mr. Schlenker, the CFO of Atlantic Express, attests that he signed the document on behalf of his company. Pl.’s Br. in Support of Mot. for Summ. J., Ex. D. Mr. Schlenker also avers that he was aware that he could have obtained underinsured motorist coverage in higher amount and that he knowingly and intelligently selected coverage of \$35,000 for Atlantic Express’ operations in Pennsylvania. Id.

Defendant argues that plaintiff has not demonstrated when the Coverages/Limits Section was executed and that, therefore, it cannot be said that the underinsured motorist coverage was limited to \$35,000 on the date of the accident. Although Mr. Schlenker did not write the date next to his signature, the Coverages/Limits Section form itself is dated December 31, 1999. As Mr. Lull stated in his deposition, that is the date that the policy began. Pl.’s Br. in Support of Mot. for Summ. J., Ex. E, pp. 35-36. Defendant has produced no evidence that there is reason to

doubt that it is also the date that Mr. Schlenker signed the Coverages/Limits Section.

Furthermore, another document that was also produced by the broker has the date of execution, not the date that the policy began, in the same spot on a similar form. The Insurance Binder was executed on a similar form made by the same company. Def.'s Br. in Opp'n to Pl.'s Mot. for Summ. J., Ex. E. The date in the same box where December 31, 1999 is typed in the Coverage/Limits Section form is the date that the binder was produced, not the date the policy became effective. It is logical to conclude that December 31, 1999 is the date that the Coverages/Limits Section was executed.

In addition to the signed document in which the insured requested \$35,000 underinsured motorist coverage, plaintiff has also produced testimony supporting its position. Mr. Schlenker, the CFO of Atlantic Express, states that he requested \$35,000 in underinsured motorist coverage, knowing that he could have obtained a higher amount of coverage. Pl.'s Br. in Support of Mot. for Summ. J., Ex. D. Mr. Lull, who acted as Atlantic Express' broker in its procurement of automobile insurance for the policy period, states that he understood when he was obtaining insurance for Atlantic Express that the company wanted only \$35,000 in underinsured motorist coverage for its cars in Pennsylvania. Pl.'s Br. in Support of Mot. for Summ. J., Ex. E, pp. 65.

Other documents present even further evidence that the parties to this insurance contract intended that the policy provide \$35,000 in underinsured motorist benefits. Both a communication dated December 22, 1999 and an invoice dated December 29, 1999 describe the underinsured motorist coverage by using the term "basic." Def.'s Br. in Opp'n to Pl.'s Mot. for Summ. J., Exs. C and F. Both documents cite a premium of \$7,500,000. The same \$7,500,000 premium is quoted in the two documents that use the term "statutory" to define the underinsured

motorist coverage - the proposal for insurance and the binder. Def.'s Br. in Opp'n to Pl.'s Mot. for Summ. J., Exs. B and E. That the same premium is quoted for "basic" and "statutory" coverage supports plaintiff's other proof that the policy intended only \$35,000 in underinsured motorist coverage from its inception.

There is even further evidence that the policy was meant to include only \$35,000 of underinsured motorist coverage. Pursuant to an Order issued in December plaintiff supplied a verification concerning the difference in price between a plan providing \$35,000 in underinsured motorist coverage and one providing \$1,000,000 in underinsured motorist coverage. In the verification Mr. Lull states that it would have cost Atlantic Express \$75 per vehicle and \$435,000 total to increase the underinsured motorist coverage from \$35,000 to \$1,000,000. Defendant questions the foundation for Mr. Lull's verification, but does not provide any information showing Mr. Lull's statements to be incorrect. Mr. Lull was in charge of obtaining automobile insurance for Atlantic Express during the relevant time period and swears that the statements he made in his verification are "true and correct." I accept his statements as evidence that supports, along with other evidence, my decision that plaintiff is entitled to summary judgment.

The signed Coverages/Limits Section, the testimony of Mr. Schlenker and Mr. Lull and the several documents quoting the same premium overcome defendant's argument that the use of the word "statutory" in the binder to define underinsured motorist benefits means that he is entitled to the bodily injury limit of \$1,000,000. If there were no other evidence regarding what coverage Atlantic Express wanted, the use of the term "statutory" might decide the issue in favor of defendant, as happened in Peele v. Atlantic Express Transportation Group, Inc., No. 4291 (Ct. of C.P. Phila. County, 1st Jud. Dist. November 8, 2002). In this case, however, viewing the

evidence in the light most favorable to defendant, plaintiff has presented evidence sufficient to prove that defendant is entitled only to the \$35,000 in benefits that he already has received.

An appropriate order follows.

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ORDER

AND NOW, this day of January, 2003, after consideration of plaintiff's motion for summary judgment, defendant's motion for summary judgment, the responses thereto, and for the reasons set forth in the accompanying memorandum, the plaintiff's motion for summary judgment is GRANTED and defendant's motion for summary judgment is DENIED. Defendant is entitled only to \$35,000 in underinsured motorist benefits under the policy between plaintiff and Atlantic Express in compensation for the accident that occurred on January 21, 2000.

THOMAS N. O'NEILL, JR., J.

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CIVIL JUDGMENT

Before: Honorable Thomas N. O'Neill, Jr.

AND NOW, this day of January, 2003, in accordance with the Court's
Memorandum and Order, dated January , 2003,

IT IS ORDERED that Judgment be and the same is hereby entered in favor of
plaintiff, Fire & Casualty Insurance Company of Connecticut and against defendant, Quentin
Ligon.

BY THE COURT: